

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-2038

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2038

JEAN CLAUDE PINTO, a/k/a
"RICHARD BEN SADOUN",

Appellant,

--v.--

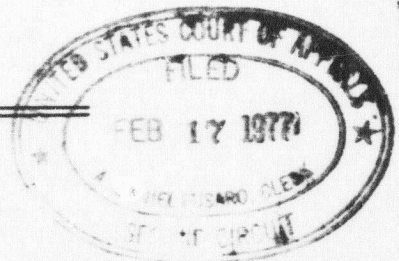
UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*



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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

A - - 1
JUDGE PIERCE

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72 CRIM. 628

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Walter J. Higgins, Jr. & USA
(1-10-73) ENRIQUE BARRERA	
(1-10-73) GILBERT BORISZTEJN	
(1-10-73) JESUS JORGE ENRIQUEZ	
(1-10-73) JEAN CLAUDE PINTO a/k/a Richard Ben Sadoun	For Defendant:
216 PHILIP ANTHONY DE LUCA 0	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk	7/7/72	N Rosenthal	5-	
J.S. 3 mailed 4, 2, 3, 1	Marshal	7/11/72	US Treas.	5-	5-
Victim Compl. #	Docket fee	1/18/73	W. C. Higgins	5-	
Title 21		1/17/73	P. A. Goldberger	5-	
		1/17/73	L. J. S. Treas.	5-	
		1/19/73	N. S. Treas.		15-
		1/19/73	Rosenthal, H	5-	
		1/23/73	US Treas.		5-
Sec. 812, 841(a) (1) and 841(b) (1) (A.) * 846 and 963					
XX Two					

DATE	PROCEEDINGS
5-22-72	Filed indictment.
5-23-72	ENRIQUE BARRERA-Pleads not guilty. Deft remanded in lieu of bail fixed at \$1,000,000.
	GILBERT BORNSZTEJN-Pleads not guilty through Ike Trabouet * Margarita Mensa, interpreters. Deft remanded in lieu of bail fixed at \$750,000.
	JESUS JORGE ENRIQUEZ-Pleads not guilty. Deft remanded in lieu of bail fixed at \$400,000.
	JEAN CLAUDE PINTO a/k/a Richard Ben Sadoun-pleads not guilty through interpreters. Deft remanded in lieu of bail fixed at \$750,000.
	PHILIP ANTHONY DELUCA-Pleads not guilty. Deft remanded in lieu of bail fixed at \$300,000. Case assigned to Judge Pierce for all purposes.
5-23-72	J. ENRIQUEZ-Filed notice of appearance by Rubin, Gold & Geller, 299 Bway, NYC 233-3330. PALMIERI, J.
5-23-72	P. DELUCA-Filed notice of appearance by Murray Richman, 160 Bway, 878-1360.
5-23-72	E. BARRERA-Filed notice of appearance by Gilbert S. Rosenthal, 401 Bway NYC 226-7971.

DATE

PROCEEDINGS

- 5-26-72 Enriquez- Filed notice of motion for re-evaluation of bail.
Motion for bill of particulars, motion for severance.
- 5-25-72 Philip A. De Luca - Application to reduce deft's bail, denied. Pierce, J.
- 5-30-72 Deft Enriquez (atty present) Application for reduction of bail
XXX Adj'd to June 1, 1972 4:30 PM. Pierce, J.
- 6-1-72 Deft atty present- application for reduction of bail, Decision reserved
Pierce, J.
- 5-31-72 Filed- Copy of opinion #38527. The deft. Deluca has moved for a reduction
of the amount of his bail. At the oral argument the Govt. moved for an
increase in the amount of bail to \$750,000.00, -Under all the circumstance
as related to the Court by government,*** Accordingly bail shall be
continued in the amount of \$300,000.00 The Court finds that this amount
is not excessive under the circumstances of this case. So ordered.
- 6-6-72 Jesusu Jorge Enriquez- Filed memorandum order setting bail at \$200,000.00.
So Ordered Pierce, J.
- 6-14-72 Filed memorandum by Judge Pierce, Deft. Jesus J. Enriquez. has moved for
a reduction of the amount of his bail the deft. fleeing from this
jurisdiction, and thus not being present to stand trial, bail is
hereby set in the amount of \$200,000.00. The Court finds that this
amount is not excessive under the circumstances of this case.
(The memo. is a copy)
- 6-15-72 Deft Barrera atty present- application made for reduction of bail;
decision reserved- Pierce, J. Defts Bornsztejn and Pinto present);
Hearing and pre-trial confrence adjs to 6-20-72 at 5pm. Pierce, J.
- 6-20-72 Defts Barrera Enriquez and De Luca (atty present) and Barnsztejn and Pinto
(no attys) appear before the court for pre-trial confrence. Also present
Jack Trabout interpreter for Barnsztejn and Pinto) Trial date adjd to
9-5-72 at 9a30 am in rm. 318 Defts Barnsztejn and Pinto to appear before
Court on 6-22-72 at 9 am with attys. Rehearing held on bail reduction app
tion of deft Barrera decision reserved. Pierce, J.
- 6-22-72 Gilbert Bornsztejn & Pinto- (Atty. present) appeal before the Court.
Hearing held and adjd. to Wed. June 28, at 4:00P.M.
Pierce, J.
- 6-23-72 Philip A. Deluca- filed notice of appearance by Lenefsky, Gallina Mass
Berne & Hoffman 51 Chambers St. New York, N.Y. Phone DI 9-6464
- 6-27-72 Filed copy of opinion # 38609 Statement of the Court is of the opinion
that the likelihood of the deft. fleeing from this jurisdiction, and
thus not being present to stand trial, appears to be great. Accordingly,
bail is hereby set in the amount of \$500,000.00. The Court finds that
this amount is not excessive under the circumstances of this case
So ordered.
- 7-6-72 BARRERA Filed Notice of appeal.

110 Rev. Civil Docket Continuation

JUDGE PIERCE

DATE	PROCEEDINGS	Date Order or Judgment Noted
-28-72	J.C. PINTO - (without counsel) appears before the Court. Adj. to 6/30/72 at 4:15 P.M. -- PIERCE, J.	
-5-72	J.R. PINTO - (without counsel) appears before the Court. Adj. to 7/7/72 at 4:30 P.M. -- PIERCE, J.	
-7-72	J.R. PINTO - (ATTY. present) - Pre-Trial conference held. Motions ret. in 25 days -- PIERCE, J.	
-12-72	Filed Transcript of record of proceedings, dated 6-15-72	
-12-72	Filed TRANSCRIPT of record of proceedings, dated 6-20-72	
-12-72	Jean C. Pinto-filed notice of appearance by Raymond J. Surrel Jr. & Herbert Miller Phone Ev 4-4240 or Bo 1-5000	
12-72	Enrique Barrera-filed notice of record on appeal has been certified and transmitted to the U.S.C.A. dated 7-12-72	
-26-72	Enrique Barrera-filed certified copy of order of the U.S.C.A. ordered a reduction of the bail heretofore set by said Dist. Court be and it hereby is denied. Clerk	
	Jesus Jorge Enriquez-filed certified copy of order of the U.S.C.A. ordered the reduction of the bail heretofore set by Dist. Court is denied. Clerk	
-2-72	Filed Transcript of record of proceedings, dated 6-1-72	
-2-72	Filed Transcript of record of proceedings, dated 5-23-72	
-2-72	Filed Transcript of record of proceedings, dated 5-30-72	
9-72	Jean C. Pinto-filed affvt. of Walter J. Higgins, in opposition to def't's motion from an order of this Court granting relief; (Dismissal of the Indictment; ; (bill of Particulars; (Discovery and Inspection (Suppression of Statements; and Severance.)	
0-72	J.J. ENRIQUEZ Filed motion that defendant be released upon bond or on his own recognizance (Pierce J.)	
8-72	De Luca- Motion application for reduction of bail. Dec. Res. Pierce, J.	
11-72	DE LUCA -Filed Opinion #38734 on reapplication for reduction of bail***reduces the bail to \$150,000.00 to be posted as follows:\$50,000.00 by secured surety bonds and \$100,000.00 by personal recognizance bond signed by Sam DeLuca and Ben DeLuca***So ordered...PIERCE, J.... Mailed notice.... remand given U.S. Marshal	
16-72	(1) 4/4C - Filed remand dated 5-23-72	

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DATE	PROCEEDINGS	Date of Judgment
8-10-72	Philip A. Deluca - filed affvt. of Walter J. Higgins, Jr., in opposition to the deft. Prior Proceedings for Discovery and Inspection Severance bill of particulars and Suppression of evidence. Filed Government's memorandum of law.	
8-16-72	Deluca - filed remand dated 8-11-72 Deft released on bail Jaceo, Mag.	
8-22-72	JESUS J. ENRIQUEZ - Application for reduction of bail is granted in the amount of \$50,000 surety bond & \$100,000 P.R.B. to be signed by deft's wife & father; otherwise motions are denied.....Pierce, J. <i>NEW Remand given by U.S. Marshall</i>	
8-23-72	Enrique Barrera - filed affvt. and notice of motion for an order bail or releasing the deft. on his own recognizance	
8-30-72	ENRIQUE BARRERA - Filed affvt. of W. Cullen MacDonald AUSA dtd. 8-29-72....	

8-29-72	ENRIQUE BARRERA - Deft (atty. only present) appl. for reduction of bail is granted. Bail is set as follows: \$50,000 cash and a \$200,000 personal recognizance bond to be signed by Renaldo & Rosa Rodriguez and Hector & Marcelito Maury. Action herein is stayed for five days pending further investigation by the Govt...Pierce, J.	
8-30-72	J. J. Enriquez - filed remand dated 5-23-72	
9-5-72	Deft. Enriquez - (atty. present) application for further reduction of bail is denied. Bail limits to include N.Y. County in the S. D. of N.Y. and Queens County in the E. D. of N.Y. Deft. to register at the U.S. atty's office on a daily basis Mon. thru Friday and deft. is not to enter a place of interstate transportation. <i>Pierce, J.</i>	
9-11-72	ENRIQUE BARRERA - Bailed reduced to \$200,000 P.R.B. with \$50,000 cash post bail posted on 9-5-72 Deft released on bail by U.S. Magistrate POTTIER.	
9-28-72	Deft Bornshtein - pre-trial conference held. Pierce, J.	
9-11-72	Filed copy of Opinion #38766 in re Pre-Trial motions by defendants. Defendants requests are denied and granted in part as indicated herein. - Motley, J. (m/n)	
10-2-72	Barrera - Filed affidavit and notice of motion for an order granting Barrera reconsideration and reargument of his motion for severance of the issues of the within indictment R 14 and for an order directing the govt a copy of each and every statement allegedly made by each of the defts herein.	
10-2-72	Filed Govt's bill of particulars.	

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DATE	PROCEEDINGS
10-5-72	E. Barrera - Filed affdvt. of Walter J. Higgins, AUSA. in opposition to defts. renewed motion for reconsideration and reargument on his motion for severance.
10-12-72	Spinelli-Filed defts letter for reduction of sentence and memo endorsed motion denied. Bonsal, J.
10-16-72	Gilbert Bornsztatn-Filed notice of appearance dated 9-27-72.
10-16-72	De Luca- Filed Order signed by Judge Pierce, dtd. 10-12-72, to have deft. examined by Dr. Abrahms, qualified psychiatrist to determine deft's competency to stand trial. (see file)
*10-6-72	Deft DeLuca - Hearing held Court Exh. 1-Locked, sealed evidence envelope Exh. 2, 3 and 4. similar.
10-10-72	Suppression hearing begun before Pierce, J. all defts & attys present.
10-16-72	Suppression hearing cont'd & adj Jury trial begun & adj to 10-18-72 at 2PM before Pierce, J.
10-18-72	Trial cont'd Suppression hearing cont'd
10-19-72	" " " " " decision reserved. Motion denied
10-20-72	Trial cont'd.
10-24-72	" "
10-25-72	" "
10-26-72	" "
10-27-72	" "
	/De Luca
10-31-72	La Barrera Filed the following papers received from Mag. Raby: Docket entry sheet. Appearance bond.
11-6-72	ENRIQUE BARRERA- Filed following papers rec'd from U.S. Magistrate. docket sheet, appearance bond.
11-9-72	Filed envelope containing Courts's exhibits 1 A thru 1K in the above entitled matter which have been ordered sealed by the Court and placed in the Clerk's office vault in room 602. This envelope is to be opned b order of the Court. Pierce, J.

DATE	PROCEEDINGS
10-30-72	
10-30-72	Trial cont'd
10-31-72	" "
11-1-72	" "
11-2-72	" "
11-3-72	" "
11-6-72	" "
11-8-72	" "
11-9-72	" "
11-10-72	" "
11-13-72	" "
11-14-72	" "
11-15-72	" "
11-16-72	" "
11-17-72	" "
11-18-72	" Jury returns at 4:30 PM with a verdict of guilty as to all defts counts 1 & 2 Jury is discharged. Sentence adjd to 1-8-73 at 4:30 PSI ordered defts remanded. Pierce, J.
12/1/72	Filed Transcript of record of proceedings, dated 10/16/72
12-15-72	BORNSZTEJN- Filed remand dated 5-23-72
12-15-72	PINTO - Filed remand dated 5-23-72
12-15-72	ENRIQUEZ- Filed remand dated 8-22-72
12/14/72	Filed Transcript of record of proceedings, dated 10-16-72
12-17-72	Filed Transcript of record of proceedings, dated 11-17-72
	on 6-19-72
12-20-72	Filed CJA Form 20 appointing Edwin P. Gonzalez/to represent def. Gilbert Bornsztejn ---Pierce
12-20-72	Filed CJA Form 10 approving payment to atty. Gonzalez ---Pierce
-16-73	Filed Govt's memorandum in support of motion to quash subpoena Duces Tecum
-16-73	Filed Govt memorandum of law.
-16-73	Filed Govt's memorandum of law.
-16-73	Filed Govt's memorandum of law
-16-73	Filed Govt's notice of motion to quash subpoena.
-16-73	Filed Govt's affidavit
-16-73	Filed Govt's affidavit.

CONT'D

DATE	PROCEEDINGS
1-16-73	Filed govt's motion to examine sureties.
1-16-73	Filed deft Barrer's memorandum of law in support of motion to dismiss the possessory charge (count 2) of the indictment.
1-16-73	Filed deft Barrer's memorandum of law.
1-16-73	Filed defts Deluca memorandum of law.
1-16-73	Filed defts memorandum of law.
1-16-73	Filed deft Bornsztejn memorandum of law.
1-16-73	Filed memorandum of law of deft, Barrera in opposition to expert witness Testimony on international narcotic trafficking.
1-16-73	Filed deft Delac's memorandum of law in opposition.
1-16-73	Filed deft Barrera reply affidavit.
1-16-73	Filed deft Deluca's affidavit and notice of motion for a court appointed psychiatrist to examine the deft.
1-16-73	Filed deft Enriquez's affidavit and memorandum of law in support of deft renewal of a motion to suppress evidence seized in violation of deft constitutional rights.
1-16-73	Filed deft Deluc affidavit and notice of motion for an order suppressing traces of heroin made at a seizure.
1-16-73	Filed deft Enriquez affidavit and notice of motion for an order suppressing the evidence.
1-16-73	Filed deft Deluca statement and application for bail.
1-16-73	Filed letter attached to affidavit of defts Claude Pinto & Bensadoun.
1-10-73	Jean Claude Pinto- Filed Judgment(atty. present) It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS on count 1 and TEN(10) YEARS on count 2 to run consecutively with the term of imprisonment on count 1. Pursuant to the provisions of Sec.841 of T. 21,U.S.C., the defendant shall be placed on Special Parole for a period of Three(3) Years to commence upon expiration of confinement. Issued commitment and copies.

Pierce, J.

(over)

1-10-73 Gilbert Bornstein- Filed Judgment# 73149 (atty. present) It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS on count 1 and TEN(10) YEARS on count 2 to run consecutively with the term of imprisonment on count 1.
In addition the deft. is FINED \$25,000. on count 1 and \$25,000. on count TOTAL FINE of \$50,000. is to be paid or the deft. is to stand committed until fine is paid or he is otherwise discharged according to law.
Pursuant to the provisions of Sec. 841 of T. 21, U.S.C. deft. shall be placed on Special Parole for a period of THREE(3) YEARS, to commence upon expiration of confinement. Deft. shall receive credit for time served
Issued commitment and copies. Pierce, J.

1-10-73 Jesus Jorge Enriquez- Filed Judgment(atty. present) It is adjudged that deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of Six(6) Years on count 1 and Six(6) Years on count 2 to run consecutively with the term of imprisonment imposed on count 1.
Pursuant to the provisions of Sec. 841 of T. 21, U.S.C., the deft. shall be placed on Special Parole for a period of Three(3) Years, to commence upon expiration of confinement. Deft. shall receive credit for time served.
Issued commitment and copies. Pierce, J.

1-10-73 Enrique Barrera- Filed Judgment# 73148 (atty. present) It is adjudged the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS on count 1 and TEN(10) YEARS on count 2 to run consecutively with the term of imprisonment on count 1.
In addition the deft. is Fined \$25,000. on count 1 and \$25,000. on count 2. Total Fine \$50,000. is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law.
Pursuant to Sec. 841 of T. 21, U.S.C., deft. shall be placed on Special Parole for a period of Three(3) Years, to commence upon expiration of Confinement. The deft. shall receive credit for time served up until the time of his arrest and detention on indictment 72Cr1026, filed in the S.D. of N.Y. furthermore, shall receive credit for time served commencing the date of his conviction in this case on 11-18-72, up until today, 1-10-73
Issued commitment and copies. Pie

DATE	PROCEEDINGS
-10-73	PHILIP ANTHONY DE LUCA-Filed Judgment(#73/50) Deft is committed to custody for imprisonment for a period of FIFTEEN(15) YEARS on count 1 and \$25,000.00 FINE, and FIFTEEN (15)YEARS on count 2 to run CONSECUTIVELY with the term of imprisonment on count land \$25,000.00 Fine.It is further adjudged that the deft is committed for study as described in Ti.18, U.S.C., Sec.4208(c), the results of such study to be furnished this Court within THREE MONTHS, unless the Court grants furt grants further time not to exceed 3months, whereupon the deft shall be returned to this Court and the sentence of imprisonment herein imposed shall be subject to modification in accordance with Ti.18,U.S.C.,Sec.4208(b). The total fine of \$50,000 is to be paid or the deft is to stand committed until the fine is paid or he is otherwise discharged according to law. Pursuant to the provisions of Ti.21, U.S.C. Sec.841, the deft shall be placed on Special Parole for a period of 3 years, to commence upon the expiration of confinement. The deft shall receive credit n for time served.....Pierce, J.
1-23-73	Enriquez-Filed order that upon recommendation of the Court that the deft be retained at the Fed. Det. Hdqtrs for a period of (30) thirty days to prepare his appeal to the U.S.C.A. Pierce, J.
1-17-73	De Luca- Filed notice of appeal to the USCA for the 2nd Circuit from judgment entered on 1-10-73 (mailed copies to deft. and US Atty's office)
1-17-73	E. barrera- Filed notice of appeal to the USCA for the 2nd Circuit from judgment entered on 1-10-73 (mailed copies to deft. and US Atty's office)
1-17-73	J.J.Enriquez and J.C.Pinto- Filed notice of appeal by both defts. to the USCA for the 2nd Circuit from judgments entered on 1-10-73 (copies mailed to both defts. and US Atty's office)
1-31-73	Filed Transcript of record of proceedings dated 10-20, 24, 25, 27-1972.
1-31-73	Filed Transcript of record of proceedings dated 10-30, 31-11/1/2, 3, 6-1972.
1-31-73	Filed Transcript of record of proceedings dated 11-8-9-10-13-14-1972.
1-31-73	Filed Transcript of record of proceedings dated 11-15, 16, 17-1972.
* 1-19-73	GILBERT BORNSZTEJN: Filed notice of appeal to USCA from judgment of Jan 10-73. (mailed copies to deft. & US Atty)

- OVER -

DATE

PROCEEDINGS

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- 1-13-73 DeLuca-Filed affidavit and notice of motion for staying execution on the required \$50,000 fine to be paid by deft.
- 2-27-73 Filed Transcript of record of proceedings, dated 1-10-73.
- 2-26-73 DeLuca - Filed Commitment & entered return, Deft. Delivered to Fed. Det. HQRTS
- 2-26-73 DeLuca - Filed Commitment & entered return, Deft. Delivered to Lewisburg Pa.
- 2-27-73 DeLuca- Filed remand dated 2-27-73
- 2-27-73 Enriquez- Filed remand dated 11-18-72
- 2-27-73 Bornsztejn- Filed remand dated 11-18-72
- 2-27-73 Pinto- Filed remand dated 11-18-72
- 2-27-73 Barbera- Filed remand dated 11-18-72
- 2-27-73 Barrera-Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.
- 3-8-73 Deluca-Filed letter from Judge Pierce to Warden Hogan U.S.Pententiary - Lewisburg PA.
- 3-16-73 E. JESUS JORGE ENRIQUES-Filed true copy of J & E with Marshal's return-Deft. delivered on 1-10-73 to Warden, Federal Detention HDQRTS, N.Y.C.
- 3-16-73 JEAN CLAUDE PINTO-Filed true copy of J & C with Marshal's return-Deft. delivered on 1-10-73 to Warden, Federal Detention HDQRTS, N.Y.C.
- 4-27-73 E. Barrera- Filed exhibits and stipulation that attached photostatic copy of original requests to charge shall be acceptable to be included in the record in the record on appeal before this court.
- 4-27-73 Barrera-Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.

DATE	PROCEEDINGS
5-31-73	De Luca-Filed envelope Report of Deft. of Justice Bureau of Prisons. Ordered sealed and placed in vault in Room-602. Pierce, J.
5-30-73	De Luca- Sentence report from U.S. Dept. Justice, Bureau of Prisons as to deft. is ordered sealed. Motion of deft's counsel for Judgment of acquittal is denied, Motion of deft's counsel to vacate sentence. Decision Reserved. Competency hearing will be held on June 20, 1973 at 9:30 A.M. Court request the Gov to produce pertinent parties from Lewisburg who can testify of deft's competency. Govt. can make motion for a court appointed doctor to examine deft. Examination is to be made the week of June 4 to June 8. Pierce, J.
6-1-73	DeLuca-Filed order- the deft. continue to be kept in the Medical Ward at the Federal House of Detention pending a hearing as to his competency, scheduled for June 20, 1973-- Pierce, J.
6-8-73	Filed Transcript of record of proceedings, dated 5-31-73
6-8-73	Filed Transcript of record of proceedings, dated 6-7-73
6-8-73	Filed true copy of U.S.C.A. order transmitting certain sealed exhibits to the U.S.C.A.
6-14-73	PHILIP ANTHONY DE LUCA-The deft. be examined at the Fed. Det. Hdqts so as to determine the deft s present competency to understand the nature of the proceedings against him and to assist his counsel in any further proceedings in this case. --Pierce, J. consented to.
6-14-73	Filed Transcript of record of proceedings, dated October 18, 1972.
6-15-73	Filed notice-The 2nd Supplemental record on appeal has this date been certified and transmitted to the U.S.C.A.
6-27-73	De Luca-Competency hearing held: Court concludes deft. is hereby to the custody of the Atty.Gen. pursuant to Sec. 4246, for treatment until such time that he shall be mentally competent to be finally sentenced or until such time as the proceeding against him are disposed according to law. The Atty. Gen. is directed to report directly to the Court at any time when in the opinion of the proper authority, the deft. is competent to continue with the proceedings against him and in any event, the Atty. Gen. is directed to report on deft's condition within 12 months, and every 12 months thereafter. Pierce, J.
6-29-73	DeLuca- Filed order that the deft. is committed purs. to S.4246 for treatment. (see above entry of 6-27-73) 2 certified copies to U.S.Marshal. - Pierce, J.
7-6-73	DeLuca- Filed notice of appeal. \$5.00 filing fee paid. (mailed notice)
7-9-73	E.BARRERA-Filed true copy of J & C with Marshal's return-Deft. delivered on 1-10-73 to Warden, Fed. Det. Hdqts. N.Y. C.

DATE	PROCEEDINGS A 12
7-9-73	G. BORNSTEIN-Filed true copy of J & C with Marshal's return-Deft. delivered on 1-10-73 to Warden, Fed. Det. Hdqts. N.Y.C.
7-18-73	Filed transcript of record of proceedings of June 27, 1973.
7-23-73	PHILIP ANTHONY DeLUCA-Filed true copy of the 6-29-73 order (Re: treatment) with Marshal's return-Deft delivered on 7-16-73 to MCFP Springfield, Missouri.
7-24-73	ANTHONY DE LUCA-Filed notice-The supplemental record on appeal has this date been certified and transmitted to the U.S.C.A.
12-20-73	Filed U.S.C.A. Mandate with Opinion attached -- The Judgment of the District Court is affirmed - Judgment entered 12-28-73 - Clerk. (Cards mailed)
3-12-74	DE LUCA= Filed Letter and Study report, dtd 5-4-73, pursuant to 18 U.S.C. Sec. 4208, (b)(c). SEALED BY ORDER OF JUDGE LAWRENCE W. PIERCE, dtd 3-12-74. Placed in Vault 3-13-74
3-12-74	DE LUCA= Filed report of Haberfeld, dtd 10-12-72 + report of Abrams, dtd 10-12-72, and report of Goldin, dtd 6-27-73. SEALED BY ORDER OF JUDGE LAWRENCE W. PIERCE dtd 3-12-74. Placed in Vault 3-13-74.
3-12-74	DE LUCA= Filed letter and report dtd 8-16-73. SEALED BY ORDER OF JUDGE LAWRENCE W. PIERCE dtd 3-12-74. Placed in Vault 3-13-74
3-12-74	DE LUCA= Filed letter and reports dtd 11-15-73 and 1-16-74. SEALED BY ORDER OF JUDGE LAWRENCE W. PIERCE, dtd 3-12-74. Placed in Vault 3-13-74.
3-12-74	DE LUCA= Filed ORDER that the above documents and correspondence are hereby transferred from the Chambers files of the undersigned, to the Court files. As indicated, the documents are hereby ordered maintained in a SEALED condition.--PIERCE, J.
3-15-74	DE LUCA= Filed copy of letter dtd 3-5-74 written by Judge Pierce to Pasquale J. Ciccone Director, Medical Center for Federal Prisoners, Bureau of Prisons, Springfield
5-2-74	Filed transcript of record of proceedings, dated 6-15-72
5-20-74	ENRIQUE BARRERA & GILBERT BORNSZTEIN - Filed Supreme Court Mandate. Petition is denied.
5-20-74	JESUS JORGE ENRIQUEZ - Filed Supreme Court Mandate. Petition is denied.
5-20-74	JEAN CLAUDE PINTO, ETC. - Petition is denied.
5-29-74	JESUS JORGE ENRIQUEZ - Filed Notice of Motion. Re: Reduction of sentence ret. 6/16/74
8-15-74	JEAN CLAUDE PINTO-Filed Notice of Motion for reduction of sentence.
9-10-74	ENRIQUE BARRERA & GILBERT BORNSZTEIN-Filed Defts. affidavit and notice of motion to reduce, modify, and/or correct sentence.
9-10-74	ENRIQUE BARRERA & GILBERT BORNSZTEIN-Filed memo. endorsed on Defts. motion dated 9-10-74. The joint motion is hereby denied in its entirety.....Pierce, J. (notice mailed by Pro Se Clerk).
Cont'd on Page #13	

JUDGE PIERCE
PROCEEDINGS

DATE	
9-11-74	JESUS JORGE ENRIQUEZ-Filed Memo. Endorsement on deft's. motion dated 5-29-74. The motion is hereby denied. So Ordered.....Pierce,J. (mailed notice)
9-11-74	JEAN-CLAUDE PINTO-Filed Memo. Endorsement on deft's. motion dated 8-15-74. The motion is hereby denied. So Ordered.....Pierce,J.(notice mailed by Pro Se)
1-27-75	PHILIP ANTHONY DE LUCA-Filed deft's. notice of motion for an order removing the deft. to the S.D.N.Y. for further proceedings, ret. 2-12-75.
3-17-75	PHILIP ANTHONY DeLUCA-Filed Govt's. memorandum in opposition to deft's. petition for habeas corpus.
4-10-75	PHILIP ANTHONY DeLUCA-Filed ORDER that deft. be returned to Medical Center for Federal Prisoners, Springfield, Missouri for a report pursuant to 18:4247. At the time the report is submitted the deft. is to be returned to this district for further proceedings. Defense counsel is invited to submit whatever information he may have which he deems pertinent. SO ORDERED.Pierce J. (mailed notice)
4-14-75	PHILIP ANTHONY DeLUCA-Filed ORDER that because of the time involved in using normal government transportation routes and because deft. would be without proper medical treatment for some 30 days, Ordered that deft. be removed from the Federal House of Detention, N.Y.C. forthwith and taken via airplane to the Medical Center for Federal Prisoners, Springfield, Missouri.....Pierce,J. (2 certified copies given to U.S. Marshal's Office on 3-15-75)
4-24-75	PHILIP ANTHONY DeLUCA-Filed true copy of Order filed 4-14-75, with marshal's return. Order received and complied with. Deft. being transported by Air on weekend of April 18th, 1975.
7-8-75	PHILIP ANTHONY DeLUCA. Filed Order: By Order dated 4-9-75, the Court requested the Director and The Board of Examiners of the Medical Center for Federal Prisoners Springfield, Mo. to submit to the Court a report on the above named deft., The parties herein requested to submit to the Court By 7-14-75. The parties herein are requested to submit to the Court by 7-14-75 any comments they may have with respect to those reports and the issues raised herein. Pierce, J. <i>M/N</i>
7-14-75	PHILLIP ANTHONY DE LUCA-Filed Govt's. memorandum of law with respect to report on deft's. mental condition.
11-19-75	PHILLIP DE LUCA-Filed Govt's. affidavit for a writ of habeas corpus. Writ Issued, ret. 11-21-75.
11-21-75	PHILLIP DE LUCA-Filed Govt's. affidavit & notice of motion for reargument of the Order dated 11-13-75 ordering deft's. release under certain conditions.
11-28-75	PHILLIP ANTHONY DE LUCA-Filed true copy of Order filed 4-10-75 with marshal's return. Deft. returned to M.C.C., N.Y.C. on 11-13-75.
12-02-75	PHILLIP De LUCA-Filed Govt's. affidavit & notice of motion to vacate the court's order of 11-13-75 directing the release of deft. under certain conditions.
12-02-75	PHILLIP ANTHONY DE LUCA-Filed copy of order filed 4-10-75 with marshal's return. Deft. transported from Jackson Co. Jail, K.C., Mo. to U.S.M. Newark, N.J. on 11-13-75

DATE	PROCEEDINGS	A 14
12-02-75	PHILLIP DE LUCA - Filed MEMO ENDORSED on Gov't's. motion for reargument filed 11-21-75. Motion granted.. ..Pierce, J. (mailed notice)	
12-16-75	PHILLIP DeLUCA - Filed Gov'ts. Affidavit by Daniel J. Beller in support of Gov'ts motion for an order vacating the court's decision dtd. 11-13-75 & for a hearing, for an independent psychiatric evaluation of the deft. & for other relief.	
12-24-75	PHILLIP ANTHONY DE LUCA - Filed Memorandum in opposition.	
1-6-76	PHILLIP ANTHONY DE LUCA - Filed Order that the Gov'ts. Application for a further psychiatric examination of the deft. is granted. Counsel for the Gov't is directed to submit an appropriate order. Pierce J (mailed notice)	
1-8-76	PHILIP DE LUCA - Filed Order that Dr. Stanley Portnow, 923 Park Ave., NYC be employed to examine deft. to determine his competence to be sentenced for the crime which he was convicted, etc. & the doctor to examine at a time & place convenient to him & deft. & that no later than 2-2-76 the doctor prepare a written report of his findings & conclusions including his prognosis & a copy of said report be submitted to the US Atty. Daniel J. Beller & to Gerald Kiernan, 30 Broad Street, NYC, & further Ordered that the US Atty. for the SDNY be directed to pay a reasonable fee for the described doctors services not to exceed the sum of \$60.00 per hour. Pierce J. (mailed notice)	
1-8-76	PHILIP DE LUCA - Filed Transcript of proceedings dtd. 11-13-75.	
1-21-76	JEAN CLAUDE PINTO - Filed letter to the Court from the Dft. dtd. 1-2-76 with memo end. on back. The within application for the names & addresses of the members of the grand jury which rendered indictment is denied. Rule 6(e) FRCP. provide for secrecy concerning grand jury proceedings, with limited exceptions. The Court is not aware of any rule of law which permits a dft. to make such discovery of grand jury matters following his conviction. Motion denied. (mailed notice)	
2-6-76	PHILLIP De LUCA - Filed Appearance Bond For Benjamin DeLuca (Defts. Brother) in the sum of \$50,000.00.	
2-10-76	PHILLIP De LUCA - Filed One Sealed Envelope containing Documents referred to in Judge Pierce's Order of Feb 10, 1976 order the documents to be maintained in a sealed condition.	
2-6-76	PHILLIP De LUCA - Filed Order that deft. be released & paroled into the custody of his atty. Gino Gallina, 30 Broad St., NYC & into custody of his brother Mr. Benjamin DeLuca, 12 Bluefield's Lane, Blauvelt, NY & that within 1 week that they present deft. to the N.Y. State Dept. of Mental Hygiene for certification for vol. commitment as a mental patient & Mr. Benjamin DeLuca post with the Clerk, SDNY a \$50,000 PRB to insure the performance of this order; & that the atty. file written reports with the court, with copy for US Attys. Office, as to status of dft. whereabouts, and as indicated. Pierce J. (mailed notice)	
2-10-76	PHILLIP ANTHONY DE LUCA - Filed Order The following documents were considered by the Court in making its decision dtd. 2-6-76 concerning the deft. ***** The listed documents are hereby transferred from the Chambers files to the Court files in order that there be a complete record in this matter. This Order shall be placed on the public record; the attached documents shall be maintained in a sealed condition. Pierce J. (mailed notice)	

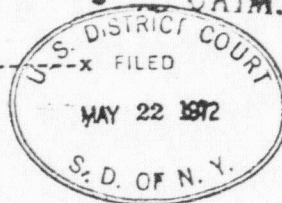
(Cont'd)

JUDGE PIERCE

DATE	PROCEEDINGS
2-17-76	PHILLIP de Luca - Filed True Copy of Order filed 2-6-76.
2-20-76	PHILIP DeLUCA - Filed letter to Judge Pierce from Gino E. Gallina dtd. 2-17-76. Re: Deft. was presented for evaluation & treatment at Rockland State Hosp. on 2-13-76 in Ward 7.
04-06-76	PHILLIP DeLUCA - Filed CJA Form 21 Copy 2 - approving payment to Stanley L. Portnow, M.D. 823 Park Ave., NYC 10021 for Examination service.
04-06-76	PHILLIP DeLUCA - Filed CJA Form 21 Copy 5 - appointing Stanley L. Portnow, M.D. to Examine dft. for competency to be sentenced and dangerousness.
5-19-76	Filed Certificate of Appointment of Examiners dated 2-5-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 CRIM. 628



UNITED STATES OF AMERICA

- v -

ENRIQUE BARRERA, GILBERT BORNSZTEJN, : INDICTMENT
JESUS JORGE ENRIQUEZ, JEAN CLAUDE
PINTO, a/k/a Richard Ben Sadoun and : 72 Cr.
PHILIP ANTHONY DeLUCA, :
Defendants. :

1. From on or about the 1st day of January, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ENRIQUE BARRERA, GILBERT BORNSZTEJN, JESUS JORGE ENRIQUEZ, JEAN CLAUDE PINTO, a/k/a Richard Ben Sadoun and PHILIP ANTHONY DeLUCA, the defendants, and Gilbert Ibarra and Christian Frederick, named as co-conspirators but not as defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.



A 17 3. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States from a place outside thereof Schedules I and II narcotic drug controlled substances the exact amount thereof being unknown in violation of Sections 312, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On May 14, 1972, Gilbert Ibarra, named as a co-conspirator but not a defendant, delivered approximately 264 pounds of heroin hydrochloride to Brussels, Belgium.
2. On May 16, 1972, ENRIQUE BARRERA, GILBERT BORNSTJEJN, JESUS JORGE ENRIQUEZ, JEAN CLAUDE PINTO, a/k/a Richard Ber Sadoun and PHILIP ANTHONY DeLUCA, the defendants, went to the vicinity of 59th Street and Third Avenue, New York, New York.
3. On May 16, 1972, ENRIQUE BARRERA and GILBERT BORNSTJEJN, the defendants, conversed with one another in the vicinity of 58th Street and Third Avenue, New York, New York.
4. On May 16, 1972, ENRIQUE BARRERA, the defendant, drove a 1972 Ford Sedan to the southwest corner of 61st Street and Third Avenue, New York, New York.
5. On May 16, 1972, JESUS JORGE ENRIQUEZ, the defendant, followed a 1972 Ford Sedan driven by ENRIQUE BARRERA, the defendant, to the southwest corner of 61st Street and Third Avenue, New York, New York.

Count concludes: Deft is convicted
... pursuant to Section 4246, for treating
... to be

6. On May 16, 1972, ENRIQUE BARRERA, the defendant, delivered a 1972 Ford Sedan to PHILIP ANTHONY DeLUCA, the defendant, in the vicinity of 61st Street and Third Avenue, New York, New York.

7. On May 16, 1972, PHILIP ANTHONY DeLUCA, the defendant, drove a 1972 Ford Sedan from 61st Street and Third Avenue, New York, New York to 86-05 60th Road, Queens, New York.

(Title 21, United States Code, Sections 846 and 963).

SECOND COUNT

The Grand Jury further charges:

On or about the 16th day of May, 1972, in the Southern District of New York, ENRIQUE BARRERA, GILBERT BORNSTEIN, JESUS JORGE ENRIQUEZ, JEAN CLAUDE PINTO, a/k/a Richard Ben Sadoun and PHILIP ANTHONY DeLUCA, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1492.2 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

Benjamin S. Chase
Foreman

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, Jr.
United States Attorney

UNITED STATES GOVERNMENT

Memorandum

JUDGE PIERCE

DATE: May 23, 1974

To: Harold Sullivan
Deputy Pro Se Clerk.

From: JAMES CLAUDE PINTO, Petitioner

UNITED STATES OF AMERICA, Respondent.
Pro Se 74 Civ. 2230

The attached motion pursuant to 28 U.S.C. Sec. 2255, which has been filed and docketed, is respectfully submitted to your Honor for consideration of the merits of the motion

BEST COPY AVAILABLE

-----X

JEAN CLAUDE PINTO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent.

-----X

NOTICE OF INTENTION TO SUE

JUDGE PIERCE

All documents filed in this action in future,
are to have the referred Judge's initials^a after the docket
numbe , as designated above.

By Order of the Court:

MAY 23 1974

W. H. Harlow
Deputy Clerk

SDNY 10/69

U.S. DISTRICT COURT
 MAY 23 1974
 S.D. OF N.Y.

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

PERSONS IN FEDERAL CUSTODY

JUDGE PIERCE

JEAN CLAUDE PINTO
 Full name of petitioner
 No. 75644-159
 Prison number
 s.
 UNITED STATES OF AMERICA
 Name of Respondent

Case No.

(To be supplied by
 the Clerk of the
 District Court)

MOTION TO VACATE JUDGMENT AND SENTENCE
 PURSUANT TO 28 U.S.C. 2255

INSTRUCTIONS -- READ CAREFULLY

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

If the petition is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fees and costs of the habeas corpus proceedings. When the petition is completed, the original and two copies shall be mailed to the Clerk of the District Court

P E T I T I O N

1. Place of detention U.S. Penitentiary, Leavenworth, Kansas 66048
 2. Name and location of court which imposed sentence U.S. District Court,
 Southern District of New York; New York, New York.

3. The case number and the offense or offenses for which sentence was imposed:

- (a) 72 Cr. 628; Title 21, U.S.C., Secs. 812, 841(a)(1), 841(b)(1)(a), 846 and 963 (Two Counts)
- (b) _____
- (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) January 10, 1973; 15 years on Count One and Ten years on Count Two to run consecutively with the term of imprisonment on Count One; with three years Special Parole to follow.
- (b) ~~term of imprisonment on Count One; with three~~
- (c) _____

5. Check whether a finding of guilty was made after a plea of

- (a) guilty _____; or
- (b) not guilty Not Guilty _____; or
- (c) nolo contendere _____

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

- (a) a jury Jury Trial _____; or
- (b) a judge without a jury _____

7. Did you appeal from the judgement of conviction or the imposition of sentence? Yes. _____

8. If you answered "yes" to (7), list

(a) the name of each court to which you appealed:

- i. U.S. Court of Appeals, Second Circuit
- ii. U.S. Supreme Court
- iii. _____

(b) the result in each such court to which you appealed and the date of such result:

- i. October 9, 1973 - Judgment Affirmed
- ii. Petition for Writ of Certiorari Denied
- iii. _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

- (a) See Annexed. _____

GROUNDS FOR RELIEF

1
2 There can be no conviction or punishment of a crime without a
3 formal and sufficient accusation. Frye v. Settle, 168 F. Supp. 7.
4 It is a basic principle of English Common Law and American Juris-
5 prudence that a person accused of crime shall enjoy the right to be
6 informed of the nature and cause of the accusation against him. The
7 procedure relied upon by the Federal Government in the instant case
8 was presentment before the Grand Jury.

9 The procedural requisites of due process and the requirements
10 mandated by the Federal Rules of Criminal Procedure, Rules 6 and 7,
11 necessarily attached to the proceedings before the Federal Grand Jury,
12 and a procedural requisite in the conduct and disposition of such
13 proceedings in the affirmative is the endorsement of twelve or more
14 grand jurors of a "True Bill" returned by the judicial body in open
15 Court.

16 It is a well settled practice of Federal Constitutional Law that,
17 absent waiver, no proceedings may be commenced absent a "True Bill"
18 returned in a Court of jurisdiction by a legally constituted grand
19 jury body. In the instant case the attestation of the indictment
20 conferring ultimate jurisdiction upon the court as a "True Bill"
21 alleged violations of Title 21, United States Code, Sections 812,
22 841(a)(1), and 841(b)(1)(a). Violations of other federal statutes
23 were not designated within the framework of the "True Bill", and their
24 conspicuous omission upon the attestation of "True Bill" renders it
25 clearly manifest that only charges brought under Title 21, United
26 States Code, Sections 812, 841(a)(1) and 841(b)(1)(a) were embraced
27 in the "True Bill" returned by the Grand Jury.

28 Though the indictment must be taken as a whole, the attestation
29 clause of the indictment setting forth the action of the Grand Jury
30 in returning a "True Bill" is the only legal record of Grand Jury
31 action under the signature of the Grand Jury Foreman and must be deemed
32 conclusive as to the disposition taken upon the charging elements of

1 of the indictment as drafted by the United States Attorney for the
2 jury's due consideration.

3 The charging language of the instant indictment alleges violations
4 of Title 21, United States Code, Section 952(a), 960(a)(1), 960(b)(1),
5 846 and 963; however the "True Bill" returned by the Grand Jury omits
6 reference to affirmative action by the Grand Jury on offenses alleged
7 in violation of these federal statutes, and is manifestly restrictive
8 to affirmative Grand Jury action on charges brought under Title 21,
9 U.S.C., Sections 812, 841(a)(1) and 841(b)(1)(a). It is clear by the
10 mandate of federal constitutional law that a person may not suffer
11 conviction upon a charge of which was never returned by a Grand Jury.

12 It is a fundamental principle of constitutional law that:

13 " . . . where indictment is required for institution
14 of criminal proceedings, lack of indictment goes to
15 the court's jurisdiction." Colson v. Smith, 315 F.
Supp. 179.

16 A defendant cannot rightfully be put upon trial for a criminal
17 offense prosecuted by indictment unless the record shows that the
18 indictment was returned into open court by a Grand Jury. Cf. United
19 States v. Glasser, 116 F. 2d 960.

20 In the instant case the record fails to show; as exhibited in
21 the annexed "True Bill" returned by the Grand Jury, that the Grand
22 Jury returned an indictment for offenses in violation of Title 21,
23 U.S.C., Sections 952(a), 960(a)(1), 960(b)(1), 846 and 963, and,
24 absent a clear showing by the record of a "True Bill" having been
25 returned upon charges brought under such statutes, a conviction
26 thereupon is constitutionally null and void. Glenn v. United States,
27 303 F. 2d 536, certiorari denied, 83 S. Ct. 1305, 373 U.S. 916, 10
28 L. Ed. 2d 416.

29 The court cannot permit a defendant to be tried on charges that
30 have not been returned by the Grand Jury no matter how overwhelming
31 evidence may be against him. Cf. United States v. Pepe, 198 F. Supp.
32 226.

10. State concisely and in the same order the facts which support each of the grounds set out in (9). A mere conclusion unsupported by specific facts does not constitute a sufficient ground for any relief under 28 U.S.C. 2255, and it is therefore necessary that you set forth in detail the facts upon which the allegations set forth above are based:

(a) (See Annexed)

(b)

(c)

11. If you have any witnesses to substantiate or support any of the grounds set forth in (9) list below:

(a) the names and addresses of such witnesses:

(1) _____

(2) _____

(3) _____

(b) a brief summarization of the facts to which each witness could testify:

(1) _____

(2) _____

(3) _____

12. Have you previously filed motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to the conviction which you seek to vacate? NO.

13. If you answered "yes" to (12), list with respect to each petition, motion or application the specific nature thereof:

(a)

FACTS SUPPORTING RELIEF

The indictment returned by the Federal Grand Jury against petitioner, viz: U.S.A. v. Jean Claude Pinto, et. al., No. 72 Cr 628, and filed in the U.S. District Court, Southern District of New York, on May 22, 1972 as a "True Bill" listed enumerated violations of the Federal Narcotics Laws consisting of the following: Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(a).

The attestation and return of the indictment giving record testimony of the "True Bill" returned by the Grand Jury fails in all particulars to embrace offenses in violation of Title 21, United States Code, Sections 952(a), 960(a)(1), 960(b)(1), 846 and 963. Conviction under such offenses is therefore null and void.

14. If you answered "yes" to (12), was an appeal taken from the disposition of any such motion? _____. If so, list below the citations, if known, to any written opinions or orders deciding the appeal:

- (1) _____
 (2) _____
 (3) _____

15. Has any ground set forth in (9) been previously presented to this or any other Federal court by way of petition for habeas corpus, motion under Section 2255 of Title 28, United States Code, or any other petition, motion or application? _____

16. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

- (1) _____
 (2) _____
 (3) _____

(b) the proceedings in which each ground was raised:

- (1) _____
 (2) _____
 (3) _____

17. If you took an appeal from the conviction which you now seek to vacate, was any ground set forth in (9) raised on said appeal? No. If your answer to this question is "yes", identify below which grounds were raised:

- (1) _____
 (2) _____
 (3) _____

18. If you have filed a previous motion or motions pursuant to 28 U.S.C. 2255 and did not raise therein grounds for a collateral attack upon your conviction which you now allege in (9),

(a) set forth the grounds not previously alleged:

- (1) _____
 (2) _____
 (3) _____

(b) set forth the reason why the above grounds were not alleged in the previous motions:

- (1) _____
 (2) _____
 (3) _____

19. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
 (b) your trial, if any? Yes

- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? _____

20. If you answered "yes" to one or more parts of (18), list

- (a) the name and address of each attorney who represented you:

(1) Raymond J. Surrel, Jr. & Herbert Miller

New York, New York

(2) Gretchen White Oberman

277 Broadway, New York, New York, 10007

(3) _____

- (b) the proceedings at which each such attorney represented you:

(1) Arraignment, plea, pre-trial, trial & Sentence.

(2) Appeal and Petition for Writ of Certiorari.

(3) _____

- (c) was said counsel

(1) appointed by the court? _____; or

(2) one of your own choosing? Yes.

Upon the grounds and for the reasons set out in the foregoing pages, petitioner moves to vacate and set aside the judgment of conviction and sentence imposed in Case No. 72 Cr 628 in the United States District Court

JEAN-CLAUDE PINTO

Signature of Petitioner
Jean Claude Pinto

State of KANSAS)

ss

County of LAVENWORTH)

I, JEAN CLAUDE PINTO, being first duly sworn upon my oath depose and say that I have subscribed the foregoing motion; that I know the contents thereof; and that the matters and allegations therein set forth are true.

JEAN-CLAUDE PINTO

Signature of Affiant

SUBSCRIBED AND SWORN to before me this 20th day of April,

19 74.

G. C. WIGGINS, PAROLE OFFICER
U. S. PENITENTIARY
LEAVENWORTH, KANSAS 66040
AUTHORIZED BY ACT OF JULY
7, 1955, TO ADMINISTER
OATHS (18 U.S.C. 4004)

[Signature]
Notary
UNITED STATES PAROLE OFFICER
(Authorized by 18 U.S.C. 4004)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ENRIQUE BARRERA, GILBERT DORNSZTEJN,
JESUS JORGE ENRIQUEZ, JUAN CLAUDE PINTO,
a/k/a Richard Ben Sadoun and PHILIP
ANTHONY DELUCA,

Defendants.

INDICTMENT

(Narcotics)

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

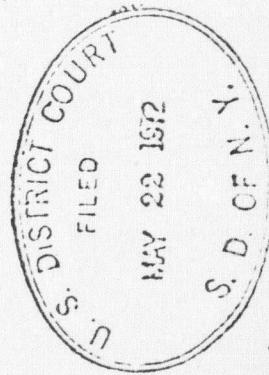
WHITNEY NORTH SEYMOUR, JR.

United States Attorney.

A TRUE BILL

Foreman.

FPI-SS-2-19-71-201-0250



MAY 22 1972

ENRIQUE BARRERA - PLEADS NOT GUILTY

DEF. REQUESTING \$1,000,000.00

GILBERT DORNSZTEJN - PLEADS NOT GUILTY

THROUGH/like TRACOUT & MARGARITA MENDEZ, INTERPRE

DEF. REQUESTING \$250,000.00

JESUS JORGE ENRIQUEZ - PLEADS NOT GUILTY

DEF. REQUESTING \$400,000.00

JUAN CLAUDE PINTO a/k/a RICHARD BEN SADOUN

PLEADS NOT GUILTY THROUGH INTERPRETERS

DEF. REQUESTING \$750,000.00

PHILIP ANTHONY DELUCA - PLEADS NOT GUILTY

DEF. REQUESTING \$500,000.00

Case referred to Judge Brine for all
Cargonia. Palmeri, R.O.

PHILIP H. DELUCA

MAY 25, 1972 (Def. Ct. House) APPLICATION TO REDUCE

DEF. DELUCA'S BAIL DENIED

RECOMMENDED

Brine, J. RF

MAY 30 1972

L. RUBIN

Def. ENRIQUEZ (att. present)

APPLICATION FOR REDUCTION OF BAIL

ADD. TO JUNE 1, 1972 4:30 PM.

Brine, J.

JUNE 1, 1972 (Def. Ct. House) Application for reduction of bail

A 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Court House
Foley Square
New York, N.Y. 10007

Mr. Littlefield
DEC 19 AM 10:50
S. D. N. Y. (73-0180)

JEAN CLAUDE PINTO
#25644-158
BOX 1000
Leavenworth Kansas 66048

DATE. 12-18-74

TITLE : .PINTO -v- U.S.A

POCKET NUMBER: Pro Se 74civ 2239

DECISION DATED: 12-11-74

JUDGE . PIERCE

OF :

THERE IS ENCLOSED HERewith, COPY OF DECISION
FILED AND ENTERED IN THE ABOVE ENTITLED PROCEEDING.

PAUL J. CURRAN
U.S. ATTORNEY
SGNENKXXX

Very truly yours,

RAYMOND E. BURCHARDT
Clerk

BY: J. BLUM
Deputy P. O. Clerk

DEC 19 1974

UNITED STATES ATTORNEY
SO. DIST. OF N. Y.

BEST COPY AVAILABLE

DISTRICT COURT
FILED

DEC 16 1974

U.S. DISTRICT COURT
S. D. N. Y.ENDORSEMENT

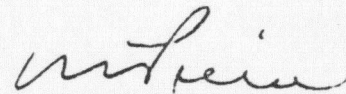
Petitioner Jean Claude Pinto has moved this Court, pursuant to 28 U.S.C. §2255, for an order vacating his conviction on the ground that the indictment in the case was constitutionally defective. By means of a submission entitled "PETITIONER'S TRAVERSE TO RESPONDENT'S ANSWER FILED HEREIN" the petitioner has further moved the Court for an order providing that the "true bill," which was filed with Indictment 72 Cr. 628 by the May, 1972 Regular Grand Jury and which has been under seal since the day of filing, be unsealed in open court at an evidentiary hearing at which the petitioner shall be present.

The petitioner's motion for an inspection of the sealed records is hereby granted to the extent that the clerk of the Court is directed to transmit the aforementioned "true bill" to the undersigned for examination by the Court in camera. Petitioner's motion for inspection is denied to the extent that it seeks an evidentiary hearing and/or an order providing that petitioner be present at the opening of the sealed records.

SO ORDERED.

Dated: New York, New York
December 10, 1974

11



LAWRENCE W. PIERCE
U. S. D. J.

MICROFILM

DEC 16 1974

A 32

U.S. COURT HOUSE
100 WALL STREET
NEW YORK 4, N.Y.

JEAN CLAUDE PINTO
75644-158
BOX 1000
LEAVENWORTH KANSAS, COHAS

DEC 31 1973 PM 2:58

S.D.N.Y.

72/179 (73-9180)

TITLE : PINTO -v- U.S.A.

POCKET NUMBER: Pro Se 14 C15 222

DECISION DATED: Dec 31, 1973

JUDGE : PIERCE

OF :

THERE IS ENCLOSED HERewith COPY OF DECISION
FILED AND ENTERED IN THE ABOVE CAPTIONED PROCEEDING.

PAUL J. CURRAN
U.S. ATTORNEY
SOUTHERN DISTRICT OF N.Y.
U.S. COURT HOUSE FOLEY SQ
NEW YORK, N.Y. 10007

CLERK OF COURT
J. BURCHARDT

J. BLUM

LEAHY & CO. CLERK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Court House
101st Street
New York, N.Y. 10003

CLAUDE PINTO
7-644-158
Box 1200
Leavenworth Kansas

DATE: 2-10-75

TITLE: . PINTO -v- U.S.A.

DOCKET NUMBER: 220 26 74 Civ 2239

DECISION DATE: Jan 31, 1975

JUDGE . Pierce

CLERK

THERE IS ENCLOSED HERewith A COPY OF THE DECISION
FILED AND ENTERED IN THE ABOVE CASE AND PROCEEDING.

XXXXXXXXXXXX
PAUL J. GUERAN
U.S. ATTORNEY
SOUTHERN DISTRICT OF N.Y.
U.S. COURTHOUSE, FOLEY SQ
NEW YORK, NY. 10007

WILLIAM L. HARRIS

RAYMOND W. BURCHARDT
Clerk

By: J. BLUM
LEAHY P. & CO. CLERK

Mr. Littlefield
72-1794
(73-0180)

2. The Section 2255 motion as filed in this Honorable Court is of a Civil nature, like habeas corpus, but the underlying subject matter is of a criminal proceedings instituted by the Government against an accused whose life and liberty is at stake in the criminal case. Therefore, the court must consider the Section 2255 motion as a direct attack upon the validity of the indictment where the claim is based upon the ground that the said indictment was not attested as "true bill" by the foreman of the Grand

FEB 18 1975
UNITED STATES ATTORNEY
SO. DIST. OF N. Y.

ENDORSEMENT

This Court has determined, by in camera inspection of the grand jury "True Bill" at issue in this case, that petitioner's allegations as to its contents are correct. See Endorsement

dated December 31, 1974. There is thus no factual issue before the Court at this time, with respect to petitioner's motion under Title 18 U.S.C. § 2255 of the United States Code, which requires an evidentiary hearing.

Accordingly, the petition herein for a writ of habeas corpus ad testificandum is denied.

SO ORDERED.

Dated: New York, New York

January 31, 1975

W. J. Cona
U.S.D.J.

36

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE, FOLEY Sq.
NEW YORK, N.Y. 10007

Re Claude Pinto
#74-148-Box.1000
Lawrence, Kansas 66048

DATE 1-7-76

Re : Pinto vs. U.S.A.
DOCKET NUMBER 74 Civ.2239
DECISION DATE December 30, 1975
JUDGE : Pierce

THERE IS ENCLOSED HERewith A COPY OF A DECISION FILED AND
ENTERED IN THE ABOVE ENTITLED PROCEEDING.

YOURS TRULY

RAYMOND F. BURCHARDT

By - Edsel F. Bower

DEPUTY PRO SE CLERK

c.c.

Lancroft Littlefield, Jr., Esq.
Asst. U.S. Atty.

P-71

A 37 Copy
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JEAN CLAUDE PINTO,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.
-----x

74 Civ. 2239

APPEARANCES:

JEAN CLAUDE PINTO
#75644 - 148 - Box 1000
Leavenworth, Kansas 66048

Petitioner, Pro Se

THOMAS CAHILL, ESQ.
United States Attorney, S.D.N.Y.
By: BANCROFT LITTLEFIELD, JR., ESQ.
Assistant U.S. Attorney
One St. Andrew's Plaza
New York, New York 10007

Attorney for Respondent

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

By an Endorsement Order, dated June 25, 1975, this Court denied petitioner Jean Claude Pinto's motion to vacate the judgment of conviction and the sentence imposed on him in this Court (72 Cr. 628). The motion was based on a claim

that petitioner had been tried, convicted, and sentenced for crimes which had never been presented to the Grand Jury. The Court determined that where the indictment signed by the Foreman of the Grand Jury set forth fully each of the offenses for which the petitioner was convicted and sentenced, there was no basis for holding the conviction invalid simply because the grand jury bill, which set forth the number of grand jurors voting for the indictment, did not also list each of the offenses charged in the indictment.

Pinto has filed a petition for a rehearing containing new factual charges, along with a renewed request for an evidentiary hearing on the motion with the petitioner present. In addition, in a submission filed with the Court on November 3, 1975, petitioner raises what appears to be a new ground for the relief originally sought. These separate grounds for relief will be considered in turn.

Pinto's petition for a rehearing is based entirely on a charge that the two count indictment which appears in the Court files of the case, and which sets forth all of the offenses for which Pinto was convicted and sentenced, was not in fact presented to the Grand Jury. Pinto charges that this indictment was substituted by the Assistant United States Attorney, just prior to trial, for an original one count

indictment which had been presented to the Grand Jury and which had charged only violations of those statutes set forth on the grand jury bill, to wit, 21 U.S.C. §§812, 841(a)(1) and 841(b)(1)(A). Accordingly, based on this new charge, Pinto renews his claim that he was tried for offenses not presented to the Grand Jury, in violation of the Fifth Amendment to the United States Constitution.

The respondent has submitted an affidavit by Walter J. Higgins, Jr., the Assistant United States Attorney in charge of the prosecution in question, which denies that a new indictment was substituted. Reference to this affidavit is unnecessary, however, to dispose of this petition since the files and records of the case, apart from the answering affidavit, conclusively show that the petitioner is entitled to no relief.

An examination of the docket sheet in 72 Cr. 628 shows that the indictment was filed May 22, 1972. No docket entry reflects the filing of a superseding indictment.

Examination of Indictment 72 Cr. 628 shows that it was stamped "Filed May 22, 1972," on the first page and on the back of the cover page. Further, the first stamped page sets out the very statutes, i.e., Title 21, U.S.C.

§§952(a), 960(a)(1), and 960(b)(1), which Pinto claims were

only included in the second indictment, allegedly substituted by the Assistant United States Attorney on the first day of trial, months later. It is apparent from these Court records that the statutes which Pinto claims were never presented to the Grand Jury were indeed included in the original indictment which was filed May 22, 1972 and which was signed by the Grand Jury Foreman.

Pinto argues urgently that the Court may not dispose of the instant motion without holding an evidentiary hearing at which he is entitled to be present and offer evidence. However, 28 U.S.C. §2255 specifically excepts from the requirement of a hearing those motions where the files and records of the case conclusively show that the prisoner is entitled to no relief. In United States v. Haynes, 342 U.S. 205 (1952), relied on by petitioner, the Court specifically found that the issues raised by the prisoner in that case were not determined by the files and records in the trial court. Id. at 219. It is also worth noting that in Haynes, the trial court had found that while the petitioner's trial counsel had indeed also represented a principal witness against the petitioner, he had done so with the knowledge and consent and at the instance of the petitioner. Id. at 209. The Court found that it was improper to make such a finding at

an evidentiary hearing without having the petitioner himself present. Disposition of the present application requires no such finding resting on facts peculiarly within the knowledge of the petitioner.

It has been held that:

"Where the allegations [in a §2255 motion] are patently unbelievable from a study of the motions, files and records in the case, the Court in the exercise of a sound judicial discretion should deny relief, otherwise the Court would be required on bare allegations to transfer prisoners at their whim." United States v. Newman, 126 F.Supp. 94, 97 (D.D.C. 1954).

See also, Raines v. United States, 423 F.2d 526 (4th Cir. 1970). In this Court's view, the instant petition for rehearing, based on the allegations set forth supra, calls for application of exactly this rule. The new factual allegations provide no basis, either for a hearing or for the final relief sought.

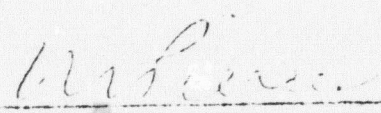
Petitioner's November 3, 1975 submission raises as a new basis for relief the claim that the judgment and sentence imposed on the first count of the indictment were in violation of the Fifth Amendment in that the first count did not set forth a distinct and separate offense from that set forth in the second count of the indictment. The Court has considered the decisions submitted by petitioner in support of

this double jeopardy claim and finds them inapplicable. In this case, it is clear that the first count of the indictment charged a conspiracy while the second count charged a substantive offense. There can be no doubt that each of the two counts required for conviction, proof of additional facts not required for conviction under the other count. Accordingly, conviction under both counts did not constitute double jeopardy as contended by petitioner.

The Court having carefully considered all of the materials submitted by the petitioner, the motion for rehearing and related relief is hereby denied in all respects.

SO ORDERED.

Dated: New York, New York
December 29, 1975



LAWRENCE W. PIERCE
U. S. D. J.

P-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JEAN CLAUDE PINO,

Petitioner

- v -

UNITED STATES OF AMERICA,

Respondent.

AFFIDAVIT

74 Civ. 2239

-----x
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

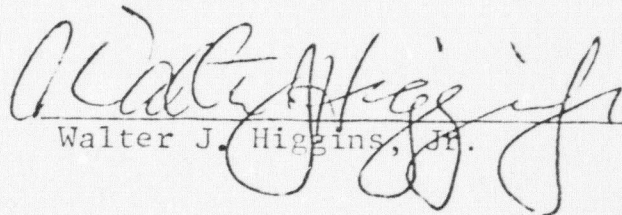
WALTER J. HIGGINS, JR., being duly sworn, deposes and says:

1. Until September 6, 1974, I was an Assistant United States Attorney for the Southern District of New York, and as such, was in charge of the criminal prosecution of the above named petitioner.

2. I have been informed by Assistant United States Attorney Bancroft Littlefield, Jr., that Jean Claude Pinto, in a petition for re-hearing of the denial by Judge Pierce of his motion pursuant to Section 2255 of Title 28, United States Code, has asserted that the Assistant United States Attorney in charge of prosecuting his case substituted a 2-count indictment for the 1-count indictment voted by the Grand Jury.

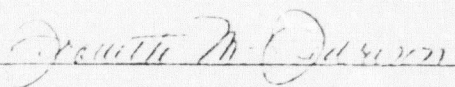
3. I categorically state that no such substitution was made by me or to my knowledge and that the indictment on

which Pinto was tried was the indictment voted and duly filed
by the Grand Jury.


Walter J. Higgins, Jr.

Sworn to before me this

19th day of September, 1975



JEANETTE M. JEDRISON
NOTARY PUBLIC State of New York
No. 41-7078118 - Qual. in Queens County
Certificate filed in New York County
Commission Expires March 30, 1976

A-45

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JEAN CLAUDE PINTO,	:
Petitioner,	:
- v -	: 74 Civ. 2239
UNITED STATES OF AMERICA,	:
Respondent.	:

-----X

ENDORSEMENT ORDER

Petitioner Jean Claude Pinto has filed a motion pursuant to 28 U.S.C. §2255 seeking to vacate the judgment of conviction and sentence imposed in case number 72 Cr. 628 in this Court on the grounds that he was convicted and sentenced for offenses not voted by the grand jury. Specifically, petitioner charges that the "true bill" or "grand jury bill" returned by the grand jury enumerated violations of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(a), but did not include violations of Title 21, United States Code, Sections 952(a), 960(a)(1), 960(b)(1), 846 and 963.

The Court determined, by in camera inspection of the documents filed by the grand jury, that indeed, the document which records the number of grand jurors concurring in the voting of the indictment did not list the latter group of offenses. However, contrary to the petitioner's assertions, this fact does not invalidate the indictment, the conviction, or the sentence.

The indictment, prepared by the Assistant United States Attorney and signed by the foreman of the grand jury, set forth fully each of the offenses for which petitioner was convicted and sentenced. In all cases brought in the Southern District of New York, the indictment is always present in the jury room when the grand jury votes. See United States v. Niedelman, 356 F.Supp. 979, 983 (S.D.N.Y. 1973). Under these circumstances, the Court finds no basis for holding that, in addition, the grand jury bill which records the number of grand jurors voting for the indictment must also list each of the offenses charged in order for the indictment to be valid.

A-47

The petitioner's motion is hereby denied.

SO ORDERED.

Dated: New York, New York
June 25, 1975

LAWRENCE W. PIERCE
U. S. D. J.

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Peter Noel Duhamel being duly sworn,
deposes and says that he is employed in the office
of the United States Attorney for the Southern District
of New York.

That on the *11th* day of *February*, 1977
he served a copy of the within *Appendix*
by placing the same in a properly postpaid franked
envelope addressed:

Jean Claude Pinto
Post Office Box PMB # 75644
Atlanta, Georgia 30315

An deponent further says that he sealed the said
envelope and placed the same in the mail chute drop for
mailing at One St. Andrew's Plaza, Borough of Manhattan,
City of New York.

P. N. Duhamel

Sworn to before me this

11th day of *FEBRUARY*, 1977

Janette Ann Gravett

JEANETTE ANN GRAVETT
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1977